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No. 95-1918

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

STATE OF ARKANSAS
Petitioner,

v.

FARM CREDIT SERVICES OF CENTRAL ARKANSAS, PCA, et al.
Respondents.

BRIEF OF THE STATES OF OHIO, CALIFORNIA, IDAHO, IOWA, MARYLAND, MICHIGAN, NEBRASKA, NEW HAMPSHIRE, NORTH DAKOTA, SOUTH DAKOTA, UTAH, WEST VIRGINIA AND WISCONSIN AS AMICI CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

BETTY D. MONTGOMERY
Attorney General of Ohio
JEFFREY S. SUTTON
State Solicitor
ROBERT C. MAIER*
*(Counsel of Record for Amici)
Assistant Attorney General
Assistant Chief, Taxation Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3428
(614) 466-5967

(Additional List of Counsel on Inside Front Cover)

25 pp

DANIEL E. LUNGREN
Attorney General
State of California

JEFFREY R. HOWARD
Attorney General
State of New Hampshire

ALAN G. LANCE
Attorney General
State of Idaho

HEIDI HEITKAMP
Attorney General
State of North Dakota

THOMAS J. MILLER
Attorney General
State of Iowa

MARK W. BARNETT
Attorney General
State of South Dakota

J. JOSEPH CURRAN, JR.
Attorney General
State of Maryland

JAN GRAHAM
Attorney General
State of Utah

FRANK J. KELLEY
Attorney General
State of Michigan

DARRELL V. MCGRAW, JR.
Attorney General
State of West Virginia

DON STENBERG
Attorney General
State of Nebraska

JAMES E. DOYLE
Attorney General
State of Wisconsin

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INTEREST OF THE *AMICI CURIAE*

Amicus State of Ohio and the other *amici* States submit this memorandum to express the States' concern regarding new difficulties in exercising their power to tax that are raised by the decision below. Two judges of a three-judge panel of the United States Court of Appeals for the Eighth Circuit affirmed a District Court decision to confer additional immunity from state taxation upon a federally-chartered production credit association ("PCA"). Immunity was granted over and above the immunity expressly provided by Congress in the very enactment that authorizes the chartering of the PCAs. This decision affects Ohio and the other *amici* States directly because they face similar claims by PCAs and by other federally-chartered entities within the Farm Credit System. Traditionally, PCAs in which the government owns no shares have been subject to most State taxes because of the language of the PCA immunity statute. See, e.g., *Woodland Production Credit Ass'n v. Franchise Tax Bd.*, 225 C.A.2d 293, 37 Cal. Rptr. 231 (1964); *Columbus Production Credit Ass'n v. Bowers*, 180 N.E.2d 1 (Ohio 1962).

The Eighth Circuit's decision to immunize PCAs will have an impact upon Ohio's and other States' ability to tax many federally chartered entities. Of particular interest is an entity which, like the PCAs, is chartered within the Farm Credit System under the Agricultural Credit Act of 1987. Ohio is currently defending an action in the United States District Court for the Southern District of Ohio against an "agricultural credit association" ("ACA") which results from a merger of one PCA and three federal land bank

associations.[1] The federal action attempts to bolster a refund claim lodged with the Ohio Department of Taxation claiming over $2 million which the ACA paid corporate franchise tax under the ongoing assumption that, like its PCA predecessor, it was subject to the tax. Other amici face similar challenges by Farm Credit entities.

SUMMARY OF ARGUMENT

The United States Court of Appeals for the Eighth Circuit proposes a change in the law. For the first time in their 62 year history, PCAs entirely under private ownership are to be exempt from gross receipts and income taxes imposed by a State. Previously, PCAs enjoyed such broad exemption only if the federal government itself owned shares in the institution--because that is the immunity Congress provided by statute. The sudden shift to broad immunity absent all government ownership occurs not by Act of Congress, but by judicial action of the Eighth Circuit.

Arkansas' petition for certiorari should be granted and the decisions below reversed for three closely-related reasons: (i) judicial activism in granting tax immunity injects

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[1] In that case, Ohio has also asserted jurisdiction is barred by the Tax Injunction Act, 28 U.S.C. §1341. Arkansas apparently raised that issue at the District Court level, but the Eighth Circuit decision makes no express mention of whether the PCAs may assert the United States' own exemption from the Tax Injunction Act. Regardless of the status of Farm Credit entities as "federal instrumentalitites," a separate analysis is necessary to determine whether a Farm Credit entity can evade the Tax Injunction Act. See *Housing Authority of Seattle v. Washington Dep't of Revenue*, 629 F.2d 1307, 1310-1311 (9th Cir. 1980); *Federal Reserve Bank of Boston v. Commissioner of Corporations and Taxation*, 499 F.2d 60, 62-64 (1st Cir. 1974); *United States v. State Tax Comm'n*, 481 F.2d 963, 973-75 (1st Cir. 1973).

confusion in the administration of state taxes by preventing reliance on the clear language of the statutes enacted by Congress; (ii) this Court's precedents counsel deference to congressional intent in determining the Supremacy Clause limitations on state taxing power--deference which should be dispositive here because Congress clearly intended that PCAs should not enjoy the immunity conferred by the Eighth Circuit; and (iii) the Eighth Circuit's activist approach to tax immunity disrupts the careful balance that this Court has attempted to strike between the States' sovereign taxing power and the legitimate protection of federal interests through congressional grants of tax immunity.

REASONS FOR GRANTING THE WRIT

The Eighth Circuit's Decision Misapplies This Court's Precedents, And Failure To Correct The Error Will Create Substantial Uncertainty In The Administration Of State Tax Laws.

Until the decision by the United States Court of Appeals for the Eighth Circuit, the States were able to determine whether, and to what extent, a federally-chartered bank within the Farm Credit System could be subjected to state taxation. The determination was a relatively simple matter because States could find the scope of immunity by reading the immunity provisions Congress enacted when it authorized the chartering of the Farm Credit institutions. If, however, the Eighth Circuit's decision is allowed to stand, the days of clarity and certainty are over.

This is so because the Eighth Circuit granted two tax

immunities (and possibly more)[2] to production credit associations ("PCAs") over and above the immunities Congress created by statute. Despite the fact Congress immunized only PCA obligations and debentures, the Eighth Circuit decided to immunize PCAs from Arkansas' gross receipts and income taxes as well. In doing so, the court not only declined to be bound by the current language of the statute, but also ignored statutory history clearly showing Congress' determination that PCAs should not enjoy such broad immunity.

The error of the lower courts lies in their interpretation and reliance on *M'Culloch v. State of Maryland*, 17 U.S. (4 Wheat.) 316 (1819). *M'Culloch*--the first and most famous of the bank immunity cases--likewise involved a claim of immunity by a federally-chartered entity. However, the similarity ends there. *M'Culloch* addressed a situation involving (i) absolute silence by Congress on the entire subject of immunity; (ii) discriminatory taxation against the federally-chartered Second Bank of the United States; and (iii) state taxation of the central federal depository and currency functions of that bank.[3] None of those factors is

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[2] The dissenting opinion below noted that the majority did not make clear the scope of immunity enjoyed by PCAs under its ruling, citing real property taxation as an example. "[T]he effect of this decision may be to exempt PCAs from state and local real property taxes, an exemption broader than *any* Farm Credit institution has enjoyed in the eighty-year history of the System." Pet. App. at A-11, 76 F.3d at 967 (emphasis in original).

[3] The federal functions of the Second Bank of the United States are enumerated in *First Agricultural Nat'l Bank v. State Tax Commission*, 392 U.S. 339, 354 (1968) (Marshall, J., dissenting). These functions included (i) presidential appointment of five out of 25 directors; (ii) government participation in election of other directors as shareholder; and (iii) issuance of currency which was established as legal tender. Clearly, the Second Bank functioned the way Treasury agencies do today. This

present in this case.

Instead, this case concerns federally-chartered PCAs whose chartering as part of the Farm Credit System was authorized by Congress beginning with the Farm Credit Act of 1933. These institutions were originally owned by the federal government but are now owned privately. The dissenting opinion below and the petition set forth the legislative history *in extenso*. Suffice it here to note that Congress never granted any immunity (beyond that of PCA obligations, notes and debentures) that was not conditioned upon ownership of PCA shares by the federal government. Since the federal government no longer owns any PCA shares, Congress intended PCAs should no longer enjoy broad immunity.

Because Congress specifically provided the extent of the immunity granted to PCAs, there was no reason prior to commencement of this case for either PCAs or the States to consider the question of immunity apart from applying the intent of the statute enacted by Congress. Indeed, this is true of all the entities in the Farm Credit System, because Congress comprehensively addressed the scope of immunity

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is a far cry from the private, profit-making lending functions of the PCAs. Compare *Federal Land Bank v. Bd. of County Comm'rs*, 368 U.S. 146, 151-52 (1961) (acknowledging Congress' intent in creating the federal land banks to allow the banks "to make a profit to be distributed to the shareholders in the form of dividends"). See also 12 U.S.C. §2074(c) (permitting distribution of PCA net earnings). Whether PCA earnings are in fact distributed as dividends or instead enjoyed in the form of lower interest rates is immaterial: either way the borrower/shareholders of the PCAs enjoy the profits of the bank's activity.

provided to each of the Farm Credit System entities.[4] By bringing this action, three PCAs broke this long-standing consensus, and they have persuaded the courts below to ignore statutory history as well as their own past practice of paying state taxes. They sought and obtained a brand new grant of immunity not from Congress but from the courts.

The holding of the District Court and Court of Appeals inevitably injects a new uncertainty into States' efforts (i) to administer their tax laws fairly while (ii) observing the legitimate limits on state taxation that are inherent in our federal system of government. From now on, reading the statutory immunity provision will not suffice to determine whether--and to what extent--PCAs (and other federally-chartered entities) should be exempted from State taxes. The States must wonder whether the mere fact of a federal charter will create immunities, and if so, what the scope of those immunities are. If it is allowed to stand, the Eighth Circuit decision would affect all States in which one or more PCAs are still chartered to operate. Moreover, as a result of the Agricultural Credit Act of 1987, a number of former PCAs and other Farm Credit System entities have merged into new entities, and the immunity status of these

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[4] The immunity of all the federally-chartered entities within the Farm Credit System has long been comprehensively addressed by Congress within a single enactment. The most recent is the Agricultural Credit Act of 1987, Pub. L. 100-233, 101 Stat. 1568 (1987). The PCA immunity statute is set forth therein at §2.6 of the Farm Credit Act [12 U.S.C. §2077], 101 Stat. at 1633. Other provisions in the same Act address, for example, immunity of Farm Credit Banks, §1.55 [12 U.S.C. §2023], 101 Stat. at 1629; and the immunity of Federal Land Bank Associations, §2.17 [12 U.S.C. §2098], 101 Stat. at 1637.

entities would in some cases be even more unclear.[5]

If this new uncertainty were somehow a necessary hazard of our federal system, then the Eighth Circuit's decision could perhaps be justified and permitted to stand--but such is not the case. This Court's precedents counsel greater respect than that shown by the Eighth Circuit for Congress' own determination of what immunities may be necessary to preserve the interests of the federal government.

As the discussion below shows, this case presents a classic example of a Court of Appeals decision addressing a question of federal law which "should be settled by this Court" because of its important ramifications for the administration of state tax systems. In addition, it will be shown below that the Eighth Circuit's failure to defer to clear congressional guidance "conflicts with applicable decisions of this Court," Rule 10.1(c). Therefore, certiorari should be granted and the decision below reversed.

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[5] As noted, Ohio is currently defending an action brought by an "agricultural credit association" ("ACA") which is the successor to one PCA and three federal land bank associations. Other *amici* also face refund claims by ACAs. Nowhere does the Agricultural Credit Act of 1987--or the technical corrections act passed in 1988--provide any immunity to the merged entity. Indeed, no statute even acknowledges any alleged federal instrumentality status of ACAs. The status of such merged entities could be clarified by a ruling that courts must look to the statutes as binding on the immunity question.

The Eighth Circuit's Decision Is Plainly Erroneous, Because Congress Intended That PCAs Not Enjoy Immunity From State Gross Receipts And Income Taxes. Under This Court's Decisions, Congress' Intent Should Be Dispositive.

The key flaw in the reasoning of the Eighth Circuit can be found in the following passage in the majority opinion:

> Beginning with *M'Culloch v. State of Maryland*, 4 Wheat. 316 (1819), the Supreme Court has repeatedly held that because of the Supremacy Clause of the United States Constitution, states have no power to tax federally created instrumentalities absent Congressional authorization.

Pet. App. at A-3; 76 F.3d at 963.

The next sentence quotes the following language from *M'Culloch*:

> "[T]he states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared."

Pet. App. at A-3; 76 F.3d at 963.

This very language from *M'Culloch* shows the essential error of the Eighth Circuit's immunity analysis: finding immunity based upon "federal instrumentality" status begs the question

whether state taxation in a given instance does or does not "retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress."

This is the question Congress itself considered and resolved in conjunction with authorizing the chartering of PCAs:

> Each production credit association and its obligations are instrumentalities of the United States and as such any and all notes, debentures, and other obligations issued by such associations shall be exempt, both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes) now or hereafter imposed by the United States or any State, territorial, or local taxing authority. ***Such associations, their property, their franchises, capital, reserves, surplus, and other funds, and their income shall be exempt from all taxation now or hereafter imposed by the United States or any State, territorial, or local taxing authority; except that interest on the obligations of such associations shall be subject only to Federal income taxation in the hands of the holder thereof pursuant to the Public Debt Act of 1941 (31 U.S.C. 742(a)) and except that any real and tangible personal property of such associations shall be subject to Federal, State, territorial, and local taxation to the same extent as similar property is taxed. The exemption provided in the preceding sentence shall apply only for any year or part thereof in which stock in the production credit associations is held by the Governor of the***

Farm Credit Administration.[6]

Farm Credit Act of 1971, Pub. L. 92-181, §2.17, 85 Stat. 583, 602 (1971) (formerly codified at 12 U.S.C. §2098, now §2077).

The Farm Credit Amendments Act of 1985 deleted the bold-faced, italicized sentences. As the dissenting opinion below correctly explained:

> This 1985 amendment deleted the express exemption that had been granted to a PCA and its income for so long as the PCA was Government-owned. ... But this court has now construed a seemingly innocuous technical amendment as instead conferring an implied grant of blanket immunity from state and local taxation. In other words, the court construes the repeal of a limited express exemption, for which no PCA remained eligible, as the grant of a far broader implied exemption. ...

Pet. App. at A-11; 76 F.3d at 967.

The dissenter, Judge Loken, perceptively went on to note that "normal principles of statutory construction" dictated the opposite of the majority's holding:

> Because PCAs had no exemption from state

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[6] This language from the 1971 statute varies in form but not substance from the language of the original 1933 statutes. See Pub. L. 73-43, §4(c), 48 Stat. 128, 130 (1933). The dissent notes that "[b]y 1968, all PCAs were owned entirely by their borrower-members." Pet. App. at A-10, 76 F.3d at 966.

> and local taxation before the 1985 amendment (other than the exemption for their obligations), they should have no exemption under the statute as amended, 12 U.S.C. §2077. But this court concludes otherwise, adhering--in my view blindly--to "no express waiver" dicta in earlier cases that discussed the implied constitutional immunity. This decision is illogical, and it is contrary to the overriding rule, grounded in constitutional and statutory principles, that defining the extent of federal instrumentality tax immunity is a quintessentially legislative task. ...[7]

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[7] It is important to note that the Eighth Circuit majority relied upon the doctrine that Congress must expressly waive immunity to subject "federal instrumentalities" to state taxation. However, the cases cited in support of the proposition actually suggest a different approach: they apply Congress' intent as manifested in the immunity statutes it enacted. In *Dep't of Employment v. United States*, 385 U.S. 355, 360-61 (1966), this Court held that the National Red Cross was an exempt instrumentality because it functioned "virtually as an arm of the government" and because, as such, it continued to enjoy statutory exemption from federal unemployment compensation, which federal statutes further extended to state taxation. Nothing in *Dep't of Employment* supports the Eighth Circuit's theory that courts should imply immunities beyond those enumerated by Congress in its immunity statutes. Nor do the Eighth Circuit's own decisions in *Federal Reserve Bank of St. Louis v. Metrocentre Improvement Dist. # 1*, 657 F.2d 183, 186 (8th Cir. 1981), aff'd in mem. op., 455 U.S. 995 (1982), or *United States v. City of Adair*, 539 F.2d 1185 (8th Cir. 1976), cert. denied 429 U.S. 1121 (1977) support such a theory, because both of those cases involved broad congressional grants of immunity with narrow exception for real estate taxation. In each case, the court decided that certain assessments simply failed to come within the real estate exception.

In any event, the conditional nature of the exemption clearly implies consent to state taxation once the condition of federal ownership is removed, as found by the California and Ohio decisions cited at page

Pet. App. at A-11 through A-12; 76 F.3d at 967.

This Court's cases show how correct the dissent was. First, the opinions of this Court addressing the immunity of entities within the Farm Credit System have always relied upon the clear language of the statutes passed by Congress. See *Federal Land Bank of Wichita v. Bd. of County Comm'rs*, 368 U.S. 146 (1961); *Federal Land Bank v. Bismarck Lumber Co.*, 314 U.S. 95 (1941).

Second, principles of statutory construction generally give effect to Congress' decision to omit language in one portion of an enactment that is included in other provisions of the same enactment. See *City of Chicago v. Environmental Defense Fund*, 114 S.Ct. 1588, 1593 (1994), citing *Keene Corp. v. United States*, 113 S.Ct. 2035, 2040 (1993) (internal quote marks omitted) ("It is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another."). "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Rodriguez v. United States*, 480 U.S. 522, 525 (1987) (per curiam) (internal quote marks omitted). This means that Congress, by expressly defining the scope of immunities as to each farm credit entity in the same legislation, intended to withhold any immunity it did not expressly grant.

Finally, this Court has recognized the unique function of Congress in determining whether state taxation in fact interferes with its own legislative purposes:

1, supra. To require such clear implication to be expressed shows insufficient respect for congressional intent.

> Wise and flexible adjustment of intergovernmental tax immunity calls for political and economic considerations of the greatest difficulty and delicacy. Such complex problems are ones which Congress is best qualified to resolve.

United States v. Detroit, 355 U.S. 466, 474 (1958).

This principle is reflected in decisions of this Court declining to extend immunity or pre-emption under the Supremacy Clause any further than Congress itself provides. See *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 151 (1973) (rejecting argument by an Indian tribe that its off-reservation resort business should be exempt from state taxation) ("Congress itself felt it necessary to address the immunity question and to provide tax immunity to the extent it deemed desirable. There is, therefore, no statutory invitation to consider projects undertaken pursuant to the Act as federal instrumentalities generally and automatically immune from state taxation."); *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 517 (1992) (considering the extent to which federal laws that require warnings on cigarette labels preempt state law causes of action based on failure to fully disclose the dangers of smoking) ("...Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted.").[8]

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[8] In *Cipollone*, this Court indicated that applying the principle of statutory construction *expressio unius est exclusio alterius* best accommodated the differing functions of the Congress and the courts. "In our opinion, the pre-emptive scope of the 1965 Act and the 1969 Act is governed entirely by the express language in §5 of each Act. When Congress has considered the issue of pre-emption and has included in the enacted legislation a provision explicitly addressing that issue, and when that provision provides a "reliable indicium of congressional intent with respect to state authority", Malone v. White Motor Corp., 435 U.S., at

Just as Congress defined the effect of the Supremacy Clause upon the legislation at issue in *Mescalero Tribe* and *Cipollone*, so too it has defined the scope of PCA immunity here. There is no reason why the courts should reconsider immunities which Congress could have created but decided not to provide. See *Itel Containers Int'l Corp. v. Huddleston*, 507 U.S. 60, 75-76 (1993); *Wardair Canada, Inc. v. Florida Dept. of Revenue*, 477 U.S. 1, 11-13 (1986). Yet this is precisely what the Eighth Circuit's interpretation of the "federal instrumentality" doctrine would do.

Applying Congress' Immunity Statutes In Accordance With Traditional Principles Of Statutory Construction Respects The Proper Boundary Between Federal And State Sovereignty.

The federal system involves delicate questions concerning the relationship between two sovereigns exercising authority within the same territory. The question of state tax immunity is perhaps the most sensitive of all. It involves limitations upon an essential attribute of the States' sovereignty: the power to tax, which this Court has called "the most basic power of government." *State of Wisconsin v. J.C. Penney Co.*, 311 U.S. 435, 444 (1940).

The very essential nature of the taxing power has heightened the sensitivity and deference this Court has shown when called upon to interfere with the operation of state tax systems. In rejecting equal protection challenges, for

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505, 55 L.Ed.2d 613, 107 S.Ct. 683 "there is no need to infer congressional intent to pre-empt state laws from the substantive provisions" of the legislation. (cite omitted) Such reasoning is a variant of the familiar principle of expression (sic) unius est exclusio alterius..." 505 U.S. at 517.

example, this Court has stated that "'[t]he States have a very wide discretion in the laying of their taxes.'" *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 526 (1959). When rebuffing attempts to "end run" state tax procedures, this Court has noted the ordinary reasons for deferring to legal remedies are "of particular force where the suit ... is brought to enjoin the collection of a state tax in courts of a different though paramount sovereignty:

> The scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts, and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it. "

Matthews v. Rodgers, 284 U.S. 521, 525-26 (1932).

Such deference reflects what the Court just last term called "the strong background presumption against interference with state taxation." *Nat'l Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 115 S.Ct. 2351, 2356 (1995). These cases recognize that, absent a congressional provision limiting state powers, the very nature of the federal system imposes particular limitations upon the federal judiciary when it is asked to interfere with the administration of state tax systems.

At our nation's inception, this Court found it necessary to protect the infant United States government by judicially implying tax immunity to protect the Second Bank of the United States from discriminatory taxation by States. See *M'Culloch v. State of Maryland*, 17 U.S. (4 Wheaton) 316 (1819), and *Osborn v. Bank of the United States*, 22

U.S. (9 Wheaton) 738 (1824). However, as Congress gained institutional experience in authorizing the chartering of federal entities, Congress increasingly addressed the necessary scope of tax immunity through the enabling legislation. During the course of this development, this Court has placed increasing reliance on Congress' own pronouncements and engaged less and less in judicially determining the need for immunity. Compare *Rockford Life Ins. Co. v. Illinois Dep't of Revenue*, 482 U.S. 182, 191 (1987) ("...[O]ur job is neither to assess the underlying merits of the program, nor to opine on whether Congress would be wise to exempt Ginnie Maes from state taxation. ... A court must proceed carefully when asked to recognize an exemption from state taxation that Congress has not clearly established."); *Smith v. Davis*, 323 U.S. 111, 119 (1944) ("All of these related statutes are a clear indication of an intent to immunize from state taxation only the interest-bearing obligations of the United States which are needed to secure credit to carry on the necessary functions of government. That intent, which is largely codified in §3701, should not be expanded or modified in any degree by the judiciary."). This principle also accords with the separation of powers at the federal level and reflects the common sense proposition that Congress--as the body enacting the laws--occupies the best position to determine how to protect its own purposes in doing so.

In light of these fundamental principles, this Court has long since abandoned an earlier willingness to infer tax immunity. One landmark in this development occurred as long ago as *Graves v. People of State of New York*, 306 U.S. 466 (1937). In that case, this Court declined to extend tax immunity to the incomes of employees of the Home Owners' Loan Corporation absent express exemption by Congress. Like the present case, Congress expressly exempted the Corporation's bonds from taxation. Rejecting the claim of a

broader implied immunity, this Court noted:

> [T]he implied immunity of one government and its agencies from taxation by the other should, as a principle of constitutional construction, be narrowly restricted. For the expansion of the immunity of the one government correspondingly curtails the sovereign power of the other to tax, and where that immunity is invoked by the private citizen it tends to operate for his benefit at the expense of the taxing government and without corresponding benefit to the government in whose name the immunity is claimed.[9]

306 U.S. at 483.

The same policy is reflected in the traditional reluctance of this Court to engage in judge-made constitutional law where careful statutory interpretation settles the matter. See *Jean v Nelson*, 472 U.S. 846, 856-57 (1985); *Gomez v. United States*, 490 U.S. 858, 864 (1989) (It is our settled policy to avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question. ...

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[9] The United States is conspicuous by its absence as a plaintiff in this case which purportedly asserts a federal sovereignty interest. That absence can perhaps be understood in light of the ruling by the United States' own taxing authority that PCAs are actually to be regarded as private businesses. See Rev. Rul. 84-109, 1984-2 C.B. 7: "[T]he description of these PCAs as federal instrumentalities does not reflect their true economic function and status and therefore is not determinative for purposes of (the business investment tax credit)." Moreover, it could be regarded as inherently contradictory of the PCAs to seek the benefit both of private business tax credits and government tax immunities.

In this case, such an alternative interpretation of the additional duties clause may be deduced from the context of the overall statutory scheme.")

Likewise, in the present case the issue of the existence and scope of the immunity possessed by PCAs can most clearly and properly be resolved by applying the immunity statutes Congress enacted.

CONCLUSION

For all of the foregoing reasons, this Court should grant certiorari and reverse the decision of the Eighth Circuit.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General of Ohio

JEFFREY S. SUTTON
State Solicitor

ROBERT C. MAIER*
*(Counsel of Record for Amici)
Assistant Attorney General
Assistant Chief, Taxation Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215-3428
(614) 466-5967

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